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09/716,740	11/20/2000	Peter Worthington Hamilton	5922R2C3	8924

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THE PROCTER & GAMBLE COMPANY  
INTELLECTUAL PROPERTY DIVISION  
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CINCINNATI, OH 45224

EXAMINER
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CHANG, VICTOR S

ART UNIT	PAPER NUMBER
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1771

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
2 MONTHS	02/07/2007	PAPER

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/716,740  
Filing Date: November 20, 2000  
Appellant(s): HAMILTON ET AL.

**MAILED**  
**FEB 07 2007**  
**GROUP 1700**

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David Mattheis  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed November 27, 2006 appealing from the Office action mailed 6/27/2006.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows: upon a careful review, since the relied upon prior art reference Sanders in view of admitted prior art sufficiently renders the instant invention obvious, the Wilbur reference has been withdrawn and the grounds of rejection has been rewritten as outlined below:

**WITHDRAWN REJECTIONS**

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner. Claims 1-15, 17,18, 38-52, 54, 55, 75, 80, 81 and 86-102

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are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilbur (US 2338749) in view of Sanders (US 5344693) and Applicants' admitted prior art.

### **NEW GROUND(S) OF REJECTION**

Claims 1-15, 17,18, 38-52, 54, 55, 75, 80, 81 and 86-102 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sanders [US 5,344,693] in view of admitted prior art.

#### **(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

#### **(8) Evidence Relied Upon**

US 5,344,693

Sanders

9-1994

#### **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-15, 17,18, 38-52, 54, 55, 75, 80, 81 and 86-102 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sanders [US 5344693] in view of admitted prior art.

Sanders' invention relates to a spacing means for an adhesive web of flexible plastic film. The spacing means is capable of maintaining separation of a surface carrying a pressure sensitive adhesive and an adjacent surface until it is required that the two surfaces shall unite one with another by the adhesive [col. 1, lines 10-13 and 60-62; col. 4, line 45]. Fig. 4 shows the transverse cross-section of an embodiment of a spacing means having three dimensional non-adherent protrusions and the thickness of adhesive 29 is less than the height of spacing means 28. Figs. 7 and 11 show embodiments in which various spacing means can be configured as being surrounded by pressure sensitive adhesive [col. 2, lines 16-26; col. 4, lines 19-24].

For claims 1, 2, 38, 39 and 86, Sanders' teachings shown in Figs 4, 7 and 11 clearly render the recited features of "non-porous", "active side exhibiting an adhesion peel force after activation", "a plurality of three dimensional non-adherent protrusions", "pressure-sensitive adhesive surrounding protrusions", "sheet is linerless", and "form a continuous seal" obvious. It should be noted that uniting a pressure sensitive adhesive surface to an adjacent surface inherently requires applying a pressure (force) to activate adhesion. Sanders is silent about modifying a storage wrapper film. However, since Sanders' invention relates to a flexible plastic film, and since applicants have admitted that flexible film materials with clinging character for forming a closure for a container is known [specification page 1, lines 18-26], it would have been obvious to one of ordinary skill in the art of flexible film to modify the admitted conventional cling wrapper film with Sanders' spacing means, motivated by the desire to obtain a storage wrapper with an improved sealing strength upon adhesive activation. While the admitted prior art is silent about workable thickness, conformability and resiliency of the wrapper film, since the combined teachings of prior art render the general features of instant invention obvious, these wrapper film related properties are deemed to be obvious routine optimizations to one of ordinary skill in the art of a wrapper film, motivated by the desire to provide workable properties dictated by the end use as a storage wrapper.

For claims 3-8, 40-45, 87, 88, 90, 94, 97, 98 and 100, since the prior art render the structure of the instant invention obvious, the type of workable force (either compressive or tensile) for adhesion activation are deemed to be inherent, once the same adhesive sheet structure is obtained. Regarding the amount of activation force, since the combined teachings of prior art render the general features of instant invention obvious, a suitable amount of activation force is

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deemed to be an obvious routine optimization to one of ordinary skill in the art of flexible adhesive sheet materials, motivated by the desire to obtain a workable adhesion property under normal use conditions of a storage wrapper.

Similarly, for claims 9, 11, 46, 48, 75, 80, 81, 91, 93, 95, 96 and 101, a suitable amount of adhesion peel force is also deemed to be an obvious routine optimization to one of ordinary skill in the art of flexible adhesive sheet materials, motivated by the desire to obtain a sufficient adhesion strength under normal use conditions.

For claims 10, 47, 89 and 99, since the optional use condition fails to limit the structure and/or composition, it does not constitute a limitation in any patentable sense.

For claims 12, 49, 92 and 102, since forming a double sides adhesive film is old and well known in the art of flexible adhesive sheet, it would have been obvious to one of ordinary skill in the art to modify an adhesive storage wrapper by coating adhesives on both sides, motivated by the desire to obtain a neatly sealed wrapper surround a container without loose film hanging away from the side of the container.

For claims 13 and 51, Sanders teaches that the pressure sensitive may be peelable or permanent [col. 5, lines 60-61].

For claims 14, 15, 51 and 52, the admitted prior art shows that polymeric materials such as PVC, PVDC and PE are commonly used to form cling films [specification page 1, 4th paragraph], and these polymers are inherently substantially translucent or transparent materials.

For claims 17 and 54, Sanders teaches that the spacing means is capable of maintaining separation prior to activation. Further, since Sanders' adhesive layer is capable of providing adhesive sealing, it would have been obvious to one of ordinary skill in the art of a storage

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wrapper to eliminate the cling modifying chemical component from the base sheet material, motivated by the desire to reduce the product cost.

For claims 18 and 55, since the combined teachings of prior art render the general features of instant invention obvious, a workable adhesive thickness is deemed to be an obvious routine optimization to one of ordinary skill in the art of flexible adhesive sheet materials, motivated by the desire to obtain a sufficient adhesion property under normal use conditions.

#### **(10) Response to Argument**

Since the Wilbur reference has been withdrawn, appellants' arguments related to Wilbur reference are moot.

Appellants argue at pages 3-4 that the examiner has improperly imposed an assumption of the gauge of a cling film, because nowhere in the specification is any mention made of a cling film having a gauge in the claimed range. However, appellants appear to have misunderstood that the rejection is 35 USC 102 based, and ignored that the grounds of rejection is in fact 103(a) based and a proper motivation statement has been provided for the obviousness of a workable thickness. Specifically, since the combined teachings of prior render the general structural features of instant invention obvious, a suitable film thickness (gauge) is deemed to be an obvious routine optimization to one of ordinary skill in the art of storage wrapper films, motivated by the desire to provide workable properties dictated by the end use as a storage wrapper.

Appellants argue at pages 4-5 that the combination of prior art is insufficient for proclaiming a reasonable expectation of success, because the base film has been modified from a planar structure to a three dimensional structure and has also been modified from a monolayer

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structure to a laminate structure, but there is no factual support for the assumption that the references may be combined without any impact upon the conformability or resiliency.

However, since Sanders teaches a three dimensional flexible laminate structure formed from an embossed planar web in general [col. 5, line 32] and the planar web clearly encompasses a monolayer flexible wrapper film, it is unseen that why a storage wrapper film cannot be embossed to form a three dimensional flexible structure. As to the conformability and resiliency, since these are clearly properties of a storage wrapper film, it is unseen why embossing would have changed these film properties. Finally, since Sanders teaches forming an adhesive laminate from a monolayer sheet material and remains flexible, there is no reason whatsoever to prevent one skilled in the art from combining the teachings of prior art accordingly with a reasonable expectation of success. Appellants fail to provide any credible support that the combination would not be successful, and ignore the reasoning set forth by the examiner in the grounds of rejection.

#### **(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

This examiner's answer contains a new ground of rejection set forth in section (9) above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer exercise one of the following two options to avoid *sua sponte* **dismissal of the appeal** as to the claims subject to the new ground of rejection:



(1) **Reopen prosecution.** Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) **Maintain appeal.** Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

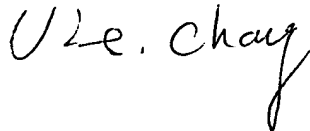
Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent

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applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

Respectfully submitted,

Victor Chang



**A Technology Center Director or designee must personally approve the new ground(s) of rejection set forth in section (9) above by signing below:**

Gregory Mills

  
**GREGORY MILLS**  
**QUALITY ASSURANCE SPECIALIST**

Conferees:

  
**JENNIFER MICHENER**  
**QUALITY ASSURANCE SPECIALIST**

Jennifer Michener

Terrel Morris

